IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE CARR
	*	
vs.	*	**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**
	*	
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	
Defendants	*	Julia R. Bates Lucas County Prosecuting Attorney By: John A. Borell (0016461) Karlene D. Henderson(0076083) Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250 Toledo, Ohio 43624 Phone: (419) 213-2001 Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us Counsel for Defendant

I. STATEMENT OF THE CASE[1]

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression. The plaintiff also seeks a temporary restraining order allowing him access to the public library during the pendency of this action.

While not entirely clear, the plaintiff appears to claim that his removal from the Library and

[1] The plaintiff has also submitted an Application to Proceed without Prepayment of Fees and Affidavit. In previous litigation in the Lucas County Common Pleas Court involving the same parties, the Court found that the defendant was not indigent. *Tronsen v. Lucas County, et al.*, Case No. CI06-1131. Inspite of his claim of indigency, the plaintiff

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subsequent temporary revocation of his library privileges violated his constitutional rights. He does **NOT** allege a due process or equal protection violation. Rather, he appears to assert that the defendant's adoption of such a policy violates the First Amendment.

As will be established below, the plaintiff has failed to establish that he is entitled to a temporary restraining order. Therefore, the plaintiff's motion must be denied.

II. STATEMENT OF THE FACTS[2]

On December 10, 2007, the plaintiff was at the main branch of defendant Toledo-Lucas County Library. He was using one of the public computer terminals. A woman patron was using the terminal next to the plaintiff.

The plaintiff handed the woman patron a note asking that if she "weren't involved with someone, would she email him at a nudity site". The female patron was extremely frightened by the plaintiff's conduct and notified the defendant's security personnel.

Library security personnel recognized the description provided by the patron as being the plaintiff. On December 19, 2007, the plaintiff was again at the main branch of the Library. He was recognized by security personnel and questioned about the December 10th incident. The plaintiff admitted that he handed the female patron the note in question.

On December 20, 2007, the plaintiff was notified in writing that his conduct violated the defendant's posted Code of Conduct and that his Library privileges were suspended for six months. The written notification also advised the plaintiff of his right to appeal this decision.[3] The plaintiff did not invoke the administrative appeal process.

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paid the filing fee once the Court denied his request to proceed without the prepayment of costs.

[2] The Statement of Facts is based on the affidavit of Jeff Sabo and documents attached thereto.

[3] The defendant's written Code of Conduct includes a procedure to challenge a decision the Code has been violated.

The plaintiff has a long history of harassing library patrons and staff. His library privileges were previously suspended for harassing library patrons. The plaintiff filed an action in the Lucas County Common Pleas Court challenging the suspension and seeking injunctive relief. The Court denied the request for a temporary restraining order and a preliminary injunction. The Court subsequently granted the motions to dismiss that had been filed by all defendants.

Unfortunately, disruptive library patrons have become a significant problem for the defendant. In order to control disruptive patrons and protect the rights and safety of Library staff and patrons, it has become necessary for the defendant to employ a 30 person security staff. This staff includes Lucas County Sheriff deputies and Toledo Police Officers.

It has also become necessary for the defendant to adopt a Code of Conduct which is entitled 'Eviction Procedures & Guidelines'. A copy of this policy is attached.

III. LAW AND ARGUMENT

A. Standard for Granting Temporary Restraining Order

A temporary restraining order is governed by Rule 65(b) of the Federal Rules of Civil Procedure. In ruling on a motion for a temporary restraining order, a court should apply the familiar four-part test, applicable to motions for Preliminary Injunction, to determine whether to grant a Temporary Restraining Order, to wit: When ruling on a motion for a preliminary injunction, a district court must consider and balance four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 460 (6th Cir.1999); *Schenck* *v. City of Hudson*, 114 F.3d 590, 593 (6th Cir.1997).*Proctor & Gamble Co. v. Bankers Trust Co*., 78 F.3d 219 (6th Cir. 1996).

Application for temporary restraining order involves invocation of drastic remedy which court of equity ordinarily does not grant, unless very strong showing is made of necessity and desirability of such action. *Youngstown Sheet & Tube Co. v Sawyer*, 103 F Supp 978(D.D.C. 1952).

B. Temporary Restraining Order Factors

1. STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

A State or its instrumentality may, of course, regulate the use of its libraries. *Brown v. Lousiana*, 383 U.S. 131, 143(1966). Under First Amendment analysis a public library is a limited public forum. *Hill v. Derrick*, 240 Fed. Appx. 935, 937(3r. Cir. 2007); *Neinast v. Bd. of Trustees of the Columbus Metro. Library,* 346 F.3d 585, 591 (6th Cir. 2003); *Kreimer v. Bureau of Police for the Town of Morristown,* 958 F.2d 1242, 1259 (3d Cir. 1992*)*. Courts have refused to characterize the public library as a traditional public forum because library users are not allowed to engage in certain expressive conduct ordinarily associated with such forums. *Kreimer,* 958 F.2d at 1256. Therefore, a library is obligated only to permit the public to exercise rights that are consistent with the nature of a library and consistent with the government's intent in designating the library as a public forum but other activities need not be tolerated. *Kreimer,* 958 F.2d at 1262; *Neinast,* 346 F.3d at 591. Traditionally, libraries provide a place for reading, writing, and quiet contemplation. *Neinast,* 346 F.3d at 591 (quoting *Kreimer,* 958 F.2d at 1261).

In addition, regardless of the name of the forum, the First Amendment does not prohibit regulation of conduct. In *Kreimer,* the court held that a written rule governing conduct of a harassing or annoying nature was controlled by the reasonableness test because such restrictions are not aimed at activities which the government had specifically permitted in the library. *Kreimer*, 958 F.2d at 1263 n.24. Applying that test, the court concluded such a rule was "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library. *Kreimer,* 958 F.2d at 1263; *Leonard Brinkmeier v. City of Freeport*, Case No. 93 C 20039(N.D. Ill. July 2, 1993), 1993 U.S.Dist. *LEXIS* 9225.

In the present case, it is undisputed that the plaintiff's library privileges were temporarily suspended because of his harassment of another patron. Specifically, he handed a sexually suggestive note to a female patron who was a complete stranger to him. Clearly, the First Amendment does not protect such conduct.

Additionally, the library clearly has a legitimate and fundamental interest in protecting library patrons from disruptive and harassing conduct.

Thus, the plaintiff has failed to establish that there is a strong likelihood of success on the merits. To the contrary, it is likely that the defendant will prevail, since the First Amendment does not prohibit conduct.

2. PUBLIC INTEREST WILL NOT BE SERVED BY THE ISSUANCE OF A TRO

As noted above, in order to grant a TRO, this Court must consider whether the public interest would be served by issuance of the injunction. Clearly, in this case, it will not. As established above, the plaintiff has a long history of harassing library patrons and staff. There is a strong public interest in protecting the rights and safety of other patrons. This interest strongly outweighs the plaintiff's "right" to engage in sexually suggestive conduct with a female patron.

IV. CONCLUSION

It is a reality of modern society that even public libraries must deal with disruptive patrons whose conduct does not comport with the purpose of a public library. If public libraries are to continue to provide a place for reading, writing, and quiet contemplation, they must have the ability to regulate disruptive patrons such as the plaintiff.

Clearly, the First Amendment allows the defendant to adopt rules governing conduct of a harassing or annoying nature because such restrictions are not aimed at activities which the government had specifically permitted in the library. Courts have concluded that such rules are "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library.

Thus, the plaintiff has failed to establish that he is entitled to a TRO and his motion must be denied.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ John A. Borell
John A. Borell
Karlene D. Henderson
Assistant Prosecuting Attorneys
Counsel for Defendant

CERTIFICATION

A copy of the foregoing Motion for Leave was sent by the court's electronic filing system to all parties on the 18th day of January 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant